NO. 20931

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARMAND C. FEICHTMEIR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

FILED

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I

JURISDICTION AND STATEMENT OF THE CASE

This is an appeal from a judgment of conviction on two counts of a four-count indictment which was returned by the Federal Grand Jury for the Southern District of California on April 4, 1965 [C. T. 2-6]. 1/

Counts One, Two, Three and Four charged a violation of Title 26, United States Code, Section 7201, Willful Attempt to Evade and Defeat Income Tax for the years 1958, 1959, 1960 and 1961, respectively.

1/ C. T. refers to Clerk's Transcript.

On December 6, 1965, a hearing was held on appellant's motion to suppress evidence and motion to dismiss the indictment. Both motions were denied [R. T. Vol. C, p. 45]. 2/

On December 7, 1965, a court trial was commenced. Trial by jury having been waived. On December 10, 1965, the appellant was acquitted on Counts One and Three, and convicted on Counts Two and Four by the Honorable Charles H. Carr, United States District Court Judge [R. T. 512-513].

On January 10, 1966, the appellant, Armand C. Feichtmeir, was sentenced to pay a fine in the sum of $7,500.00 on each of Counts Two and Four [C. T. 144].

On January 10, 1966, appellant filed a notice of appeal [C. T. 145].

The jurisdiction of the District Court was predicated on Title 26, United States Code, Section 7201, and this Court has jurisdiction to entertain this appeal under the provisions of Title 28, United States Code, Sections 1291 and 1294.

II

STATUTE INVOLVED

Title 26, United States Code, Section 7201, provides in pertinent part:

"Any person who wilfully attempts in any

2/ R. T. refers to Reporter's Transcript.

manner to evade or defeat any tax imposed by this title or the payment thereof shall . . . be guilty of a felony and, upon conviction thereof shall be fined not more than $10,000 or imprisoned not more than five years, or both, together with the cost of prosecution."

III

STATEMENT OF FACTS

A. Method of Proof and Computation of Corrected Tax Liability.

Appellee proceeded to trial on the net worth method. This method computes income by measuring the increase between two points in time of a man's assets minus liabilities. To this increase is added any expenditures which would not be reflected in either the acquisition of assets or reduction of liabilities. In addition, the government negated the possibility that non-taxable funds were the source of appellant's unreported net worth, thus logically concluding that the net worth increases were derived from some taxable source.

The years covered by the indictment were 1958 through 1961. The government started its net worth computation as of December 31, 1950.

The evidence established appellant's net worth as follows:

YEAR ENDING		NET WORTH
12/31/50	-	$ 24,585.54
12/31/51	-	27,991.85
12/31/52	-	42,661.77
12/31/53	-	99,069.22
12/31/54	-	131,270.40
12/31/55	-	120,560.55
12/31/56	-	132,316.25
12/31/57	-	266,470.58
12/31/58	-	268,294.47
12/31/59	-	396,153.45
12/31/60	-	461,780.82
12/31/61	-	513,955.50

Based on the testimony and evidence, the Government proved the following computations of appellant's corrected income and corrected tax liability for the indictment years.

	PER RETURN	CORRECTED
1958		
Taxable Income	$50,472.53	$58,962.10
Income Tax Liability	20,509.84	25,727.55
1959		
Taxable Income	38,522.15	134,477.56
Income Tax Liability	13,661.86	79,857.62

	1960	
Taxable Income	48,188.06	57,501.91
Income Tax Liability	18,494.04	23,410.77
	1961	
Taxable Income	64,126.25	95,299.23
Income Tax Liability	28,612.25	49,547.73

B. Appellant's Business Interests.

In 1950, the appellant was an insurance agent and broker operating the Armand C. Feichtmeir Agency, a sole proprietorship [R. T. 176-177].

In 1951, appellant introduced a non-occupational insurance policy for bracero and agriculture laborers. This program expanded and by 1961 appellant insured all but two growers in the State of California [R. T. 179-180]. Concurrently appellant's business interests expanded and in May, 1954, appellant incorporated his initial business under the name Armand C. Feichtmeir and Company. Appellant was President and owned controlling stock interest.

a. Fuller Comissary Company was incorporated in 1956. A majority of its stock was owned by Armand C. Feichtmeir and Company. Fuller Commissary operated a camp for farm laborers in San Diego County. In 1960, Fuller Commissary changed its name to San Luis Rey Properties [R. T. 156-157].

b. Maps, Incorporated, was organized in 1953. The

majority of its stock was owned by appellant's family. From 1953 to 1956, Maps engaged in the business of housing and feeding farm laborers in Blythe, California. In 1956, appellant's family acquired total ownership of the stock and the corporation became inactive until approximately 1959 [R. T. 151-154].

c. Mission Acres is a partnership formed in 1959 by Fuller Commissary (San Luis Rey Properties) and Maps, Incorporated. Mission Acres was formed to purchase unimproved land [R. T. 157-158].

Pan American Underwriters, Incorporated, was incorporated in September, 1955; appellant was president and owned controlling stock interest. Pan American Underwriters was a derivative of the sole proprietorship Armand C. Feichtmeir and Company. Pan American Underwriters engaged exclusively as an insurance agency handling health and accident insurance for agricultural laborers.

a. Rancho Armando was a ranch in Imperial Valley. In December, 1961, Rancho Armando was incorporated and all of the stock was owned by Pan American Underwriters, Incorporated.

Pan American Underwriters of Arizona was incorporated in 1959 in Arizona. Pan American Underwriters of Arizona was an insurance agency handling health and accident insurance for agricultural laborers [R. T. 88].

Spa Limited was appellant's sole proprietorship created in 1953. Spa Limited operated as a lending institution on chattel mortgages and was actively so engaged from its inception until 1961 [R. T. 88-89].

P. A. F. was a shell corporation which maintained a commercial checking account from 1957 through 1959 in which the appellant deposited his personal funds [Exhibits 91-94].

C. Other Investments

On September 3, 1959, appellant purchased an apartment house in Beverly Hills with a $60,350.00 deposit in escrow, $40,350.00 from the bank account maintained by P. A. F. an inactive corporation; and $20,000.00 comprised of four cashier's checks, each in the amount of $5,000.00 purchased on four consecutive days at four different banks with currency [Exhibits 13-17, 92].

In 1960, appellant invested over $40,000.00 in Ellis Middlefield Associates, a joint venture engaged in land development in northern California. In 1961, appellant increased his investment by $25,000.00. This sum of money was comprised of five cashier's checks for $5,000.00 each, purchased at five different banks on the same date. The applications therefor show that four of said cashier's checks were purchased with currency [Exhibits 71-75].

In December, 1961, appellant paid $35,000.00 for a half interest in a trust deed on property known as the Kobayshi Ranch, Westmoreland, California [Exhibits 45-48].

Commencing in 1957, appellant began buying municipal bonds and as of December 31, 1961, his investment in municipal bonds totaled $100,589.51 [Exhibits 100-108, 126].

Corresponding with appellant's increases in his net worth

were his investments in stocks other than his closely-held businesses. His investments increased in value from $1,786.60 as of December 31, 1950 to $93,775.81 as of December 31, 1961 [Exhibits 100, 102-108, 110, 113-115, 117, 122-123, 128]. This evidence was produced from eight separate brokerage firms and seven transfer agents.

Appellant's funds on deposit started at $3.42 on December 31, 1950, and increased to $19,320.31 as of December 31, 1961. In tracing appellant's financial history, the evidence concerns seventeen separate banks or branches throughout California, in San Antonio, Texas, and in Mexico City [Exhibits 13, 14-17, 41, 62-63, 71-75, 77-79, 83, 88, 91, 95, 97, 82, 101]. Illustrative of the exhaustive investigation are Exhibits 100 and 101. Hill Richards brokerage firm recorded the serial numbers of currency used by appellant for several of his stock purchases. The Government was able to trace $5,500.00 of this currency to its inception, thereby establishing that on April 12, 1957, January 3, 1958, and September 5, 1958, specified new $100.00 notes were issued by the San Antonio Federal Reserve Bank to the Frost National Bank in San Antonio, Texas; the Frost National Bank transferred the money to the Banco Nacionale in Mexico City, and within a matter of months of each transaction this money was being spent by the appellant.

As part of the evidence of appellant's non-deductible expenditures, documents were produced from 17 third-party businesses [Exhibit 98].

Perhaps the clearest indication of appellant's financial growth is that in the early 1950s, appellant was a borrower. That is, in order to purchase a $34,000 home and an automobile he had to seek financing [Exhibits 26, 109, 128]. On the other hand as of December 31, 1961, appellant was a lender in the sum of $80,907.86 [Exhibits 49, 57-60, 62].

D. Trust

Appellant's mother was the beneficiary of a trust. Stocks which were part of the trust's assets in 1961, were included in the government's net-worth computation as appellant's assets [Exhibit 128, common and preferred stock other than closely held corporation]. All of such stocks were traced to purchases by appellant from his own private or personal funds with the exception of $499.22 [R. T. 662-670, Exhibits 100, 102-108, 110-122].

Additionally, appellant reported capital gain transactions for trust stock on his 1961 income tax return [Exhibit 7]. Since said stocks originated in appellant's personal funds they are properly includable in the government's net-worth computation as either an asset or a non-deductible expenditure (gift). Regardless of the designation the effect is the same.

E. Non-Taxable Sources

The government's meticulous investigation negated the

possibility that non-taxable funds such as loans, gifts or inheritances, accounted for appellant's unreported net worth increase of $144,000. During the indictment years, appellant received no gifts or inheritances. Appellant's only loan was for the purchase of the apartment house in 1959.

The families of appellant and his wife were traced.

Bennett was the maiden name of appellant's wife, Peggee Feichtmeir. Mr. and Mrs. Bennett gave the following gifts to Peggee Feichtmeir: 50 shares of AT&T in June of 1947 [Exhibit 110]; $5,000 in 1944; $5,000 in 1945; and $10,000 in the late 1940's [R. T. 200, 213-215].

In 1950 Mr. Bennett died. He left no estate having transferred his assets to Mrs. Bennett prior to death.

The only inheritance received by Peggee Feichtmeir was $3,000.00 from an aunt in 1948 [R. T. 204].

Since 1950 the surviving members of the Bennett family consisted of Mrs. Bennett and her two daughters, Peggee Feichtmeir and Mrs. Kirk Mallory [R. T. 201]. At the time of trial Mrs. Bennett was 96 years old [R. T. 217]. In 1959 all of Mrs. Bennett's assets were placed in a trust and her son-in-law, Kirk Mallory, was sole trustee. Since 1959 Mrs. Bennett's gifts were a Christmas or birthday gift of a nominal value [R. T. 198-199].

Kirk Mallory testified that he and his wife had never loaned money to the appellant's family. The Mallorys had never borrowed money from the appellant's family. The Mallorys had never engaged in any business with the appellant's family [R. T. 202].

In appellant's family there were no gifts or loans to appellant [R. T. 183-189, 193]. To the contrary, appellant loaned money to both of his brothers, part of which appellant wrote off as an uncollectible bad debt [R. T. 182, 192].

Appellant's father died in January, 1940, leaving no estate [R. T. 185-186]. The only inheritance received by appellant was $190.00 from an uncle in 1950 [R. T. 186, 193].

From 1951 to the time of trial the surviving members of the Feichtmeir family consisted of appellant's mother and two brothers [R. T. 185]. During the indictment period appellant supported his mother [R. T. 190, 193-194].

Thus, the evidence established that from 1940 to 1950 appellant and his wife received over $20,000.00 and 50 shares of American Telephone and Telegraph constituting non-taxable funds. The stock is contained in the Government's net worth computation [R. T. 352]. To the extent that the money was converted into assets, expenditures or reduction of liabilities, it would also be reflected [R. T. 351].

The possibility that this non-taxable sum was a reserve available in the indictment period was completely negated by the Government's proof that from 1950 to 1958, appellant expended over $98,000.00 more than reported funds available. It should also be noted that appellant never claimed that he saved or accumulated these funds.

F. Wilfullness

The record is replete with evidence of wilfulness and intent. The pattern of understatement and the substantiality of evaded tax are indicia of intent. As an example, appellant evaded over 80% of his correct tax liability for 1959.

During the indictment period, appellant's currency transactions totaled $194,725.56 which was significantly comparable to his unreported income. Appellant's salary checks and bank accounts are not the source of this currency. There are no non-taxable sources. The currency was received in the same year it was expended by appellant. It is logical to conclude that the currency was generated by undisclosed business interests. This fact is corroborated by appellant's efforts to avoid detection of the currency. For example, in August, 1959, appellant purchased four cashier's checks, each in the amount of $5,000.00. He purchased each check with currency at four different banks on four consecutive days [Exhibit 14-17]. On another occasion, appellant purchased five cashier's checks each in the amount of $5,000.00; these checks were all purchased on the same day at five different banks. Four were purchased with currency and the application for the fifth check does not identify the funds used [Exhibits 71-75]. Another device utilized by the appellant was a bank account in the name of P. A. F. P. A. F. was a shell corporation, having no assets or business function. Large sums of cash were deposited to the P. A. F. account and used for personal expenditures by appellant [Exhibit 92].

Consciousness of guilt is also shown by his statement to the Revenue Agent and the "funds statement" given to the Special Agent [R. T. 274, 30-31]. In both instances, he deliberately attempted to mislead the agents by claiming accumulated cash was the source of his expenditures. As the evidence established there was no unexpended cash accumulation.

From these facts one can conclude that appellant intended to evade the payment of taxes.

IV

ARGUMENT

A. THE DISTRICT COURT PROPERLY CONCLUDED THAT APPELLANT'S UNREPORTED NET WORTH INCREASE WAS TAXABLE INCOME.

1. The Government Satisfies Its Burden When It Disproves the Existence Of a Claimed Non-Taxable Source.

The crux of this appeal is the propriety of equating the unreported net worth increase with unreported taxable income. Holland v. United States, 348 U.S. 121 (1954), a leading case on the net worth method, indicates that a net worth case is vulnerable in its accuracy of computations, yearly allocation of increase, and inference of taxability. In the instant case appellant stipulated to substantially all of the items comprising his net worth. Although this impedes demonstrating the meticulous nature of the

Government's investigation, it clearly establishes the accuracy of the Government's computations as well as proper yearly allocation. To support the inference of taxability, the Holland case, supra, states that proof of a "likely source" was sufficient.

Subsequently in Massei v. United States, 355 U.S. 595 (1958), the Supreme Court determined that absence of non-taxable sources rationally supported the inference of taxability.

On the quantum of proof required to negate non-taxable sources, it is the Government's premise that in claiming one non-taxable source, the appellant has refuted the other non-taxable sources, and therefore the Government has met its burden of proof when it establishes beyond a reasonable doubt the falsity of appellant's claim. Throughout the investigation, appellant claimed personally and through his counsel, that his unreported net worth increases were the result of accumulated prior earnings.

On June 12, 1962, a Revenue Agent questioned appellant about the source of his currency expenditures. Appellant explained that he had accumulated currency by withdrawing $500 a month from his commercial account at the main branch of the Bank of America in Los Angeles [R. T. 274]. The Government completely refuted this explanation by showing that during the eleven year period from January 1, 1951 through 1961, the appellant made only twelve withdrawals in the sum of $500 for a total of $6,000 [Exhibit 84]. Then the Government proved that appellant's currency expenditures were over $90,000 for 1957 [Exhibits 85, 94, 97, 99, 100, 103, 104]; over $20,000 for 1958 [Exhibits 85, 100]; over $100,000

for 1959 [Exhibits 14-17, 63, 85, 100]; over $19,000 for 1960 [Exhibits 80, 96, 105]; and over $43,000 for 1961 [Exhibits 61, 62, 72-75]. Comparing the $6,000.00 cash withdrawn to the $272,000.00 cash expended, it is clear that appellant's explanation of cash accumulated from prior years is false.

In April of 1963, appellant again offered an explanation for his expenditures. At this time the investigation was being conducted by a special agent or criminal investigator and the appellant had retained an attorney to represent him for the investigation. The special agent was given a "funds statement" to establish that appellant's accumulated funds from prior reported earnings constituted a cash reserve which was the source of his later expenditures [Exhibit 81, Report R. T. 30-31]. An accountant prepared the "funds statement" from appellant's available records and information supplied by appellant [R. T. 130-136]. Certainly under these circumstances, any false statement so carefully prepared can only be construed as a wilful misrepresentation by appellant calculated to deceive the agents. In the "funds statement" appellant claimed that for 1953 through 1957 he had, at different times, cash reserves which totaled over $60,000. These reserves were allegedly derived from available reported income. To negate this explanation, the Government established that during the seven year period preceding the first indictment year, appellant expended over $98,000 more than available funds as reported [Exhibit 128].

Utilizing 1957 as an example, appellant claimed in his "funds statement" that he had a cash reserve at the beginning of the year

of over $28,000, and that he received over $72,000 during 1957, for a total of over $100,000. Appellant then claimed that he dispersed over $91,000 during 1957, resulting in a cash reserve at the end of the year of over $9,000.

It is interesting that appellant admits receiving $72,943.11 during the calendar year 1957, whereas on his income tax return for 1957, he reported an income of $48,580.16. Of course it was necessary to admit greater earnings in pre-indictment years in order to result in the cash savings claimed. The most telling fact is that the Government proved that in 1957, appellant dispersed or expended over $165,000, rather than the $91,000 alleged by appellant [Exhibits 3, 94, 99, 128]. Thus clearly appellant's carefully contrived explanation of cash savings was false.

> "Where taxpayer has committed himself to one specific explanation of the source of funds expended, the Government should not be required to waste time and resources in futilely attempting to negate possible non-taxable sources which have, in effect, been denied by taxpayer's claim of a particular source." Gatling v. C. I. R., 286 F.2d 139, 144 (4th Cir. 1961).

> "It is well settled, however, that the commissioner may in proceedings such as these are, prove a source of taxable income or disprove the existence of alleged sources of non-taxable funds. Whereas here, the taxpayer advances as a defense one claim of a

non-taxable source, that claim negates other possible non-taxable sources and the commissioner satisfies his burden when he disproves the existence of the claimed source." Ferris v. C. I. R., 317 F. 2d 333 (2nd Cir. 1963). See also Commissioner of Internal Revenue v. Thomas, 261 F. 2d 643 (6th Cir. 1958).

These decisions were civil net worth tax cases. However, in a criminal tax evasion case, " . . . the prosecution makes out a sufficient case to go to the jury, if the evidence would have been enough in a civil action; the only difference between the two is that in the end the evidence must satisfy the jury beyond any reasonable doubt." United States v. Costello, 221 F. 2d 668, 671 (2nd Cir. 1955).

Several criminal net worth tax cases have also determined what is sufficient negation of non-taxable sources in the absence of a likely source. They have held that the taxpayers' wilful misrepresentation of non-taxable receipts logically infers an effort to conceal unreported taxable income during the indictment years from some source.

United States v. Holovachka, 314 F. 2d 345 (7th Cir. 1963);

United States v. Ford, 237 F. 2d 57 (2nd Cir. 1956);

United States v. Adonis, 221 F. 2d 717 (3rd Cir. 1955).

The burden of proof rests upon the Government but it has met its burden and established a prima facie case when it negates

the non-taxable source claimed by appellant. Information as to the existence of non-taxable sources is peculiarly within the knowledge of appellant and could easily have been presented by him. He contends nevertheless that the possible existence of non-taxable sources creates a fatal defect in the Government's case. The Supreme Court has stated, however, that "the general rule . . . is that it is not incumbent . . . on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which if untrue could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control." Rossi v. United States, 289 U.S. 89, 91-92 (1953) and cases cited; VIII Wigmore, Evidence (3rd Ed. 1949), Section 2273; II Id. Sections 285-291. Certainly, if a jury may weigh the failure of an accused murderer to explain recent possession of property of the deceased, if it may draw an inference of guilt from the unexplained possession of contraband narcotics, it may also give weight to the failure of an accused taxpayer to produce evidence of the value of assets which allegedly would deprive the Government's case of substance.

Wilson v. United States, 162 U.S. 613 (1896);

Yee Hem v. United States, 268 U.S. 178 (1925).

The force of a prima facie case may not be defeated by "skillful concealment" (United States v. Johnson, 319 U.S. 503 (1943)), or by mere conjecture or speculation as to the possible existence of undisclosed assets.

2. Appellee Negated All Possible Sources Of Non-Taxable Income.

Section 63 of Title 26, United States Code defines taxable income as gross income minus deductions.

Section 61 of Title 26, United States Code defines gross income as all income from whatever source derived.

Sections 101 through 121 of Title 26, United States Code set forth those items excluded from gross income. An examination thereof shows that only three sections have any application to the instant case. In computing unreported taxable income, the Government excluded dividends received as provided in Section 116 of Title 26, United States Code and also tax exempt interest as provided in Section 103 of Title 26, United States Code [Exhibit 128]. Section 102 of Title 26, United States Code provides that gross income does not include gifts, bequests, devises or inheritances. As described in the Statement of Facts, the Government conducted an exhaustive investigation of appellant and his family. The results established no gifts or inheritances during the indictment years. From 1940 to 1950 appellant and his wife received some gifts and inheritances of stock and money. The stock is contained in the Government's net worth computation [R. T. 352]. To the extent that the money was converted into assets, expenditures, or

reduction of liabilities, it would also be reflected [R. T. 351]. The possibility that some $20,000 in gifts or in inheritances constituted a cash accumulation, on hand during the indictment period, was completely negated by the Government's proof that from 1950 to 1958, appellant expended over $98,000 more than available funds as reported [Exhibit 128].

Thus, it is submitted that in the instant case appellee has negatived all possible sources of non-taxable income.

3. The Appellee Produced Evidence Of Likely Source.

"... it is well established that the Government need not prove the specific source of proved increases in net worth in order to demonstrate their tax character as income; it is sufficient for it to prove a 'likely source' from which the jury could reasonably find that the net worth increase sprang."

United States v. Sclafani, 265 F. 2d 408, 413 (2nd Cir. 1959);

Holland v. United States, 348 U. S. 121;

Armstrong v. United States, 327 F. 2d 189 (9th Cir. 1964).

In this case, the Government established that during the indictment period appellant had interests in eight operating

businesses plus investments in real estate, trust deed, joint venture and stocks and bonds. As part of the evidence it was also shown that appellant was receiving money from Mexico indicating an undisclosed Mexican business source [Exhibits 100-101]. Books and records were maintained only for the corporations. Appellant did not keep a personal set of books for his other businesses or investments [R. T. 66-67].

Admittedly, the Government did not detect any specific false entries in the corporate records, however, the existence of other income producing businesses and investments for which the appellant maintained no books would seem to establish a likely source. The Court could thus conclude on the basis of the entire evidence that appellant's new affluence during the prosecution years must have come from these businesses and investments and therefore was income unreported on his tax returns. Barsky v. United States, 339 F. 2d 180 (9th Cir. 1964).

B. CONSTITUTIONAL RIGHTS OF THE APPELLANT WERE NOT VIOLATED WHEN HE VOLUNTARILY MADE STATEMENTS TO A REVENUE AGENT.

On June 12, 1962, in appellant's office, he and his accountant met with Revenue Agent Akola. The Revenue Agent did not advise appellant of the right to remain silent under the Fifth Amendment or of a right to counsel. During this meeting appellant made false statements concerning the source of his expenditures. Appellant

contends that these statements were obtained in violation of the Fourth, Fifth and Sixth Amendments and should not have been admitted into evidence. The Government submits that this issue is controlled by Kohatsu v. United States, 351 F.2d 898 (9th Cir. 1965), cert. den. 384 U.S. 1011.

> "We find nothing in the Escobedo opinion or its 'philosophy' which would impose this duty [to inform a taxpayer of the criminal nature of the investigation and his right to remain silent], upon Revenue Agents during their investigation of a taxpayers' tax returns and records."
>
> Kahatsu v. United States, supra;

See also:

> Rickey v. United States, 360 F.2d 32 (9th Cir. 1966);
>
> United States v. Spomar, 339 F.2d 941 (7th Cir. 1964).

Appellant seeks to distinguish Kahatsu by relying on Section 7602 of Title 26, United States Code, and the existence of an informant's letter.

The Revenue Agent did not compel the appellant to appear, produce records, or give testimony. The provisions of Section 7602 of Title 26, were not used and it is inapplicable. Smith v. United States, 250 F. Supp. 803 (D.C. New Jersey 1966).

The existence of an informant's letter is immaterial. The examination was being handled by a Revenue Agent whose duties concerned tax liability from a civil aspect. A special agent or

criminal investigator had not been assigned or even consulted [R. T. 267]. When the matter was subsequently referred to the Intelligence Division appellant secured the representation of counsel. The appellant, through his counsel, continued to cooperate and supply additional information.

In the specification of errors, appellant cites the admission of exhibits obtained from the appellant by the special agent as error. He presents no argument on this point. These records were obtained with the permission of appellant's counsel [R. T. 28-30]. There was no violation of any of appellant's constitutional rights.

V

CONCLUSION

For the reasons stated, the judgment of the District Court should be affirmed.

Respectfully submitted,

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